

Organizations that make application to the Department of Revenue and are determined to be exclusively religious, educational, or charitable, receive an exemption identification number (an "E" number). See the enclosed copy of 86 Ill. Adm. Code 130.2007. (This is a GIL).

April 30, 2002

Dear Xxxxx:

This letter is in response to your letter dated January 29, 2002 that we received on February 22, 2002. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), which can be accessed at the Department's Website at <http://www.revenue.state.il.us/Laws/regs/part1200/>.

In your letter, you have stated and made inquiry as follows:

Please accept this letter as a formal request for a written ruling concerning Illinois sales and use taxation of our product.

Our company's principal business is the sale for resale of uncooked food items to fund-raising organizations such as schools, churches, and other nonprofit groups. In addition, our customers include other businesses such as daycare facilities. These customers in turn resell these items at a markup to the final end consumer for fund-raising purposes.

The primary product we sell is a 'Pizza Kit', which is an uncooked, make-it-yourself food product for human consumption. The pizza kit includes preformed pizza crusts, sauce pouches, cheese packets (some are sold with additional ingredients such as pepperoni) and instructions on how to assemble and bake the kits at home. As the pizza kits are an uncooked food item, they require refrigeration.

After contacting your office several times over the phone, we have received varying advice as to whether our sales are exempt from sales and use tax. Our understanding is that the sales tax implication to us is minimal, as all our sales of unprepared food items are treated as sales for resale. In addition, we understand that we are not obligated to collect sales tax on behalf of any customers.

We would greatly appreciate specific guidance from your department as to whether our sales are taxable in the state of Illinois. If our sales are exempt, please confirm that fact and whether or not our exempt status is contingent on any specific documentation provided by our customers that must be retained in our files. If any of our sales are

taxable please indicate the statutory authority relevant to the transaction and verify the current tax rate (state and local).

Please contact me with any questions.

In general, the Illinois Retailers' Occupation Tax (i.e. sales tax) is imposed upon the total gross receipts received by retailers who make sales of tangible personal property, including pizza kits, to Illinois end users. See 86 Ill. Adm. Code 130.101, enclosed.

Organizations that make application to the Department of Revenue and are determined to be exclusively religious, educational, or charitable, receive an exemption identification number (an "E" number). See the enclosed copy of 86 Ill. Adm. Code 130.2007. This number evidences that the Department recognizes the organizations as exempt from incurring Use Tax when purchasing tangible personal property in furtherance of their organizational purposes. If an organization does not have an E number, then its purchases are subject to tax. Please be aware that only sales to organizations holding the E number are exempt, not sales to individual members of the organization.

Organizations that have E numbers are also allowed to engage in a very limited amount of retail selling without incurring Retailers' Occupation Tax liability. These limited amounts of selling are described in the enclosed copy of 86 Ill. Adm. Code 130.2005(a)(2) through (a)(4). An exempt organization may engage in sales to members, noncompetitive sales, and certain occasional dinners and similar activities (two fundraisers a year) without incurring Retailers' Occupation Tax liability. Organizations could use their E numbers to purchase items for such limited exempt sales. However, if organizations engage in ongoing selling activities (such as Little League concession stands or sales of items in a thrift shop run by a church), they must also register with the Department as retailers, file returns and remit tax. For these types of ongoing sales, the organizations would provide their suppliers with Certificates of Resale for the items they purchase to resell and remit Retailers' Occupation Tax on their gross receipts from sales. See 86 Ill. Adm. Code 130.1405, enclosed, which describes the requirements for validly executed Certificates of Resale.

In summary, if an organization submits to you their Department of Revenue issued E number or a properly completed certificate of resale, you do not have to collect sales tax. If the documentation is not submitted, you should collect and remit tax. Unless an exemption is documented, the sale and delivery of tangible personal property to an Illinois customer creates a legal presumption that the sale is for use in Illinois and subject to tax. See 35 ILCS 105/4.

Sales of food can be subject to either low (1%) or high (6.25%) rates under the Retailers' Occupation Tax Act. Local sales taxes may also apply, depending upon where retail sales are made. Please be advised that Section 2-10 of the Retailers' Occupation Tax Act allows the reduced rate of tax for food sold for human consumption that is to be consumed off the premises where it is sold, other than alcoholic beverages, soft drinks, and food that has been prepared for immediate consumption, 35 ILCS 120/2-10. As a general proposition, the sale of pizza kits as described in your letter would be subject to the 1% State rate of tax, plus applicable local taxes. The total rate for any location in Illinois is listed in the Sales Tax Rate Reference Manual. This publication is available for viewing or downloading at the Department's Website at <http://www.revenue.state.il.us/Publications/index.htm>.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Karl W. Betz
Associate Counsel

KWB:msk
Enc.